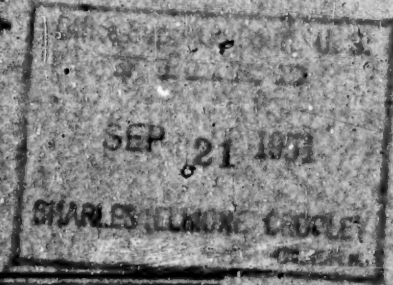


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SUPREME COURT, U.S.



No. 14

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT FORTIER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

construction, including 1 USC 109, clearly point to the conclusion that Congress intended, in preserving allocations and priorities granted under the Veterans' Emergency Housing Act, to preserve maximum prices and construction requirements on houses built with the aid of those allocations or priorities, or, at the least, that it did not repeal the builder's obligation to maintain those prices. Respondents, having asked and received both permission-to-build and priorities assistance, must now be required to observe the conditions upon which such aid was granted. See *United States v. Elade Realty Corp.*, 157 F.2d 979, 981 (C.A. 2), certiorari denied, 329 U. S. 810. It may be, as the court below seemed to feel, that the interpretation we urge would be inequitable to some people whose building costs were high, if they could not secure other relief. The short answer, as we have pointed out, is that such relief was available; there was open to the builder, at any time prior to passing of title, a means by which his sales price could have been increased on a showing of increased costs. *Supra*, p. 26 (fn. 14), 33. In any event, the interpretation of the court below cuts off relief from hundreds of veterans who paid over-ceiling prices contrary to the legislative purpose.

visions and those of any regulations thereunder, should be treated as remaining in force "as to rights or liabilities incurred or offenses committed" thereunder. *Infra*, p. 54.

II

The United States Is Entitled to Bring This Suit to Enforce Respondents' Obligation Not to Sell at More Than the Maximum Sales Price

In both courts below, respondents questioned the standing of the United States to sue under Section 7 (c) of the Veterans' Emergency Housing Act of 1946. *Infra*, p. 55. The District Court apparently overruled the objection. See R. 49-50. The Court of Appeals did not mention it, and may well have ruled against respondents since the point is logically prior to the merits of the case, which the court did discuss. However, Judge Woodbury, in a concurring opinion, expressed "grave doubt with respect to the standing of the United States under § 7(c) of the Act of 1946, or even of the Expediter, or his successor, to bring suits for restitution, particularly within the year given to buyers by § 7(d) of the Act to do so on their own behalf." (R. 59).²⁶ It may be that respondents will again raise the point in this Court.

Section 7(a) of the 1946 Act provides:

Whenever in the judgment of the Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 5 of this Act, he may make application to the appropriate court for an

²⁶ The sales occurred on December 4, 1947 and November, 12, 1947 (R. 15). The complaint was filed on November 9, 1948 (R. 1).

order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Expediter that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, may be granted and if granted shall be granted without bond.

Section 7(c) gives the district courts jurisdiction of all proceedings under Section 7: *Infra*, p. 55.

It is settled law that the United States can sue in its own name to protect its interest without the joinder of the agent through which it has acted. *United States v. Allied Oil Corp.*, 341 U. S. 1, 5; *Erickson v. United States*, 264 U. S. 246; *Clallam County v. United States*, 263 U. S. 341; *Insurance Co. of North America v. United States*, 159 F. 2d 699 (C.A. 4). Clearly, the United States was here, *vis a vis* the Housing Expediter, the real party in interest and, therefore, was entitled to maintain suit in its own name, even though Section 7(a) speaks of the Expediter's making application to the appropriate court. See *Keele v. United States*, 178 F. 2d 766, 768-9 (C.A. 5); *United States v. Allied Oil Corp.*, *supra*. See also the Government's Brief in the *Allied Oil* case, No. 364, Oct. Term, 1950, at pp. 16 *et seq.* A large number of suits have been brought by the United States to enforce rights under Section 7 (a), and in no case, so far as we

are aware, has the standing of the United States been denied.

Similarly, there can be no question, since the recent decision of this Court in *United States v. Moore*, 340 U. S. 616, that a suit for restitution can be brought under Section 7(a). And cf. *Porter v. Warner Holding Co.*, 328 U. S. 395. In the *Moore* case, this Court held that Section 206(b) of the Housing and Rent Act of 1947 authorized a suit for restitution of rent overcharges even though, because the area in which the rental units involved were located had been decontrolled before suit was instituted, no suit for injunction would lie. In its pertinent phraseology, Section 206(b) of the Housing and Rent Act is substantially identical with Section 7(a) of the Veterans' Emergency Housing Act. Compare 340 U. S. at 618-619 with *supra*, p. 45.²⁷

The only remaining question can be whether the suit by the United States is premature if brought within the year in which the buyer could himself have sued under Section 7(d) (*infra*, pp. 55-56). We submit that it clearly is not. Suit by the United States was permitted by the Act to protect the interest of the United States. *Keele v. United States, supra*. In the case of a threatened

²⁷ In its Brief in the *Moore* case, No. 344, Oct. Term, 1950, at pp. 12, 15, the Government pointed out the similarity in treatment of restitution actions under Section 206(b), there involved, and comparable statutes governing maximum sales prices on houses, such as Section 7, involved here.

violation of the Act, a suit for injunction would be proper and the injunction, if granted, would sufficiently protect the interest of the United States. When, however, the violation had already occurred, only restitution would protect the United States' special interest and, therefore, a suit for restitution is proper. *United States v. Moore, supra*. But the power of the United States to protect its interest should in no way be dependent on the exercise or non-exercise by the buyer of his right to sue for restitution within a year after the sale. Normally, the United States may sue to enforce its rights and interests without waiting for action by some private party whose interests are also involved, and Section 7(d) does not purport to modify this established rule or to cut down the generality of Section 7(a), which authorizes suit "whenever" the Expediter believes that a violation has occurred. This suit is not brought in lieu of suit by the buyer but is brought independently to enforce the obligation of respondents to the United States. In the circumstances, it is plain that the bringing of suit by the United States was proper.²⁸

²⁸ Of course, the year for suit by the buyers under Section 7(d) has long elapsed (see fn. 26, *supra*, p. 45), and at this stage of the litigation there would hardly appear to be any substantial bar to the continuation by the United States of the present suit, even if Judge Woodbury is right in thinking that the United States should not have originally brought suit until the year had fully passed. As noted above (fn. 26), the suit was brought shortly before the year expired.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below should be reversed and the cause remanded for entry of judgment for the United States.

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SEPTEMBER 1951.

APPENDIX

1. The pertinent portions of the Veterans' Emergency Housing Act of 1946 (60 Stat. 207, 50 U.S.C. App. § 1821 *et seq.*), provided as follows:

SEC. 1. (a) The long-term housing shortage and the war have combined to create an unprecedented emergency shortage of housing, particularly for veterans of World War II and their families. This requires during the next two years a house-construction program larger than ever before. The first step toward such a program is to overcome the serious shortages and bottlenecks with respect to building materials, to expedite the production of such materials, to allocate them for house construction and other essential purposes, and to accelerate the production of houses with preferences for veterans of World War II and at sales prices or rentals within their means. To carry out this program, it is necessary to invest a housing expediter with adequate powers, including the power to issue policy directives. Accomplishment of these objectives will assist returning veterans to acquire housing at fair prices, stimulate industry and employment, prevent a post-emergency collapse of values in the housing field, and promote a swift and orderly transition to a peacetime economy.

(b) The provisions of this Act, and all regulations and orders issued thereunder, shall terminate on December 31, 1947; or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring

that the provisions of the Act are no longer necessary to deal with the existing national emergency, whichever date is the earlier.

* * * * *

SEC. 2. (b) The Housing Expediter, in addition to such other functions and powers as may be delegated to him by the President, is authorized to—

(1) formulate such plans and programs as are necessary to provide for an increased supply of housing accommodations of all kinds and, in particular, of homes available for sale or rental at moderate prices to veterans of World War II and their immediate families;

(2) issue such orders, regulations, or directives to other executive agencies (including the Office of Economic Stabilization and the Office of Price Administration) as may be necessary to provide for the exercise of their powers in a manner required by or consistent with the execution of the aforesaid plans and programs, and to coordinate the activities of such agencies directed to the execution of such plans and programs. Each executive agency shall carry out without delay the orders, regulations, or directives of the Housing Expediter, and shall, to the extent necessary, modify its operations and procedures from time to time to conform to the directions of the Housing Expediter;

(3) recommend to the President the enactment of such legislation as may be neces-

sary to provide the authority to carry out such plans and programs as are not authorized under existing law;

(4) consult and cooperate with other agencies of the Federal Government, State and local governments, industries, labor, and other groups, both national and local, with respect to the problems created by the housing emergency and the steps which can be taken to remedy it.

* * * * *

SEC. 3. (a) Whenever in the judgment of the Expediter the sales prices of housing accommodations the construction of which is completed after the effective date of this Act have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish maximum sales prices for such housing accommodations in accordance with the provisions of this Act. Any such regulation or order may be limited in its scope to such geographical area or areas and to such types or classifications of such housing accommodations as in the judgment of the Expediter may be necessary to effectuate the purposes of this Act. Before issuing any regulation or order under this section, the Expediter shall, so far as practicable, advise and consult with representative members of industries affected by such regulation or order, and he shall give consideration to their recommendations and to any recommendations which may be made by State and local officials concerned

with housing conditions in any area affected by such regulation or order.

* * * * *

SEC. 4. (a) Whenever in the judgment of the Expediter there is a shortage in the supply of any materials or of any facilities suitable for the construction and/or completion of housing accommodations in rural and urban areas, and for the construction and repair of essential farm buildings, he may, by regulation or order allocate, or establish priorities for the delivery of, such materials or facilities in such manner, upon such conditions, and to such extent as he deems necessary and appropriate in the public interest and to effectuate the purposes of this Act.

(b) In issuing any regulation or order allocating or establishing priorities for the delivery of any materials or facilities under this section, the Expediter shall give special consideration to (1) satisfying the housing requirements of veterans of World War II and their immediate families, (2) the need for the construction and repair of essential farm buildings, and (3) the general need for housing accommodations for sale or rent at moderate prices. In order to assure preference or priority of opportunity to such veterans or their families, the Expediter shall require that no housing assisted by allocations or priorities under this section shall be sold within 60 days after completion or rented within 30 days after completion for occupancy by persons other than such veterans or their

families: *Provided*, That the Expediter by appropriate regulation may allow for hardship cases.

* * * * *

SEC. 5. It shall be unlawful for any person to effect, either as principal or broker, a sale of any housing accommodations at a price in excess of the maximum sales price applicable to such sale under the provisions of this Act, or to solicit or attempt, offer, or agree to make any such sale. It shall be unlawful for any person to violate the terms of any regulation or order issued under the provisions of this Act. Notwithstanding any termination of this Act as contemplated in section 1 (b) hereinabove, the provisions of this Act, and of all regulations and orders issued thereunder, shall be treated as remaining in force, as to rights or liabilities incurred or offenses committed prior to such termination date, for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

* * * * *

SEC. 7. (a) Whenever in the judgment of the Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 5 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Expediter that such person has engaged or is about to

engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, may be granted and if granted shall be granted without bond.

* * * * *

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 5 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under this section. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Expediter or the United States Government in any proceeding under this Act.

(d) If any person selling housing accommodations violates a regulation or order prescribing a maximum selling price, the person who buys such housing accommodations may, within one year from the date of the occurrence of the violation, bring an action

for the amount by which the consideration exceeded the maximum selling price, plus reasonable attorney's fees and costs as determined by the court.

* * * * *

2. Section 1 (a) of the Housing and Rent Act of 1947; Act of June 30, 1947 (61 Stat. 193, 50 U.S.C. App. (Supp. I) § 1881) provides as follows:

Section 1 (a):

Sections 1, 2 (b) through 9, and sections 11 and 12, of Public Law 388, Seventy-ninth Congress, are hereby repealed and any funds made available under said sections of said Act not expended or committed prior to the enactment of this Act are hereby returned to the Treasury: *Provided*, That any allocations made or committed, or priorities granted for the delivery, of any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect.

* * * * *

3. The pertinent portions of Title III of the Second War Powers Act (56 Stat. 177, 50 U.S.C. App. 633) provided as follows:

* * * * *

Whenever the President is satisfied that the fulfillment of requirements for the defense of

the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

* * * * *

(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.

* * * * *

4. The Act of March 22, 1944 (58 Stat. 118, 1 U.S.C. (Supp. IV.) § 109) provides as follows:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still

remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

5. Priorities Regulation No. 33 of the Civilian Production Administration, as amended June 14, 1946, (11 F. R. 6598) provided, in relevant part, as follows:

* * * * *

§944.54 (a).

What this regulation does. (1) *General.* This regulation provides priorities assistance to carry out the Veterans' Emergency Housing Program which calls for the construction of moderate and low-cost housing accommodations to meet the needs of returning veterans and members of the Armed Forces. It also provides for giving specific authorization under the Civilian Production Administration Veterans' Housing Program Order 1 to persons wishing to construct, repair, make additions or alterations to, improve or convert, or install fixtures or mechanical equipment in housing accommodations. This regulation explains who may apply for such an authorization and for priorities assistance (an HH rating and the right to place certified orders, generally referred to in this regulation simply as HH ratings), the circumstances under which applications will be approved, the way in which the priorities assistance given under the regulation may be used, and the conditions which will be imposed on the builder and suc-

ceeding owners in selling or renting the accommodations as long as this regulation is in force. Schedule A to this regulation lists the materials for which priorities assistance given under the regulation may be used. * * *

* * * * *

§ 944.54 (e).

Construction of the project. A builder who constructs, converts, alters or repairs housing accommodations under this regulation must do the work in accordance with the description given in the application, except where he has obtained written approval for a change from the agency which approved the original application.

* * * * *

§ 944.54 (g).

Maximum sales prices and rents—(1)—General. The restrictions on sales prices and rents contained in this paragraph (g) must be observed so long as this regulation remains in effect. They apply to dwellings of the kinds described below when built or converted under this regulation. Approval of a proposed sales price or rent should be considered merely as a limit upon the price or rent to be charged. It should not be considered as a statement that the sales price or rent represents the value of the dwelling or the apartment for other purposes. In the case of remodelling or rehabilitation, the Office of Price Administration may

reduce the maximum rent specified in the application, unless prior approval of the rent has been obtained from that agency.

* * * * *

§ 944.54 (g) (2) (ii).

A builder must not sell a one-family dwelling built or converted under this regulation, including the land and all improvements (including garage if provided), for more than the maximum sales price specified in the application, as approved, including within this sales price the amount of any brokerage fees or commissions paid in connection with the sale, whether paid by the builder or by the purchaser.

* * * * *

§ 944.54 (g) (7).

Requests for increases in sales prices and rents by builders. A builder may apply to the Federal Housing Administration for an increase in the sales price or rent specified in the application before the house is sold (i.e. before title has passed) or initially rented. The application will not be approved unless he can show that he has incurred or will incur additional or increased costs in the construction over which he had, or has, no control, or if he can show that he will incur additional or increased costs in the operation of rented accommodations over which he has no control, and that these increased or additional costs will

make it impracticable for him to sell or rent at the price or rent specified in the application. No increase in sales price or rent will be granted in excess of the increase in construction cost, or a proper proportion of it, or the increase in operating cost, as the case may be. However, no increase in sales price to an amount more than \$10,000 (or \$17,000 in the case of a two-family dwelling) will be granted and no increase in shelter rent to more than \$80 a month will be granted except on appeal where unusual hardship would result.

* * * * *